

UNITED STATES DISTRICT COURT  
DISTRICT OF SOUTH DAKOTA  
CENTRAL DIVISION

FILED

NOV 13 2006



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IVAN YELLOW EARRINGS,

Petitioner,

-VS-

UNITED STATES OF AMERICA,

Respondent.

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CIV 05-1025

CR 03-10020

ORDER AND OPINION ADOPTING  
REPORT AND RECOMMENDATION  
AND DENYING  
MOTION TO VACATE, SET ASIDE OR  
CORRECT SENTENCE AND DENYING  
CERTIFICATE OF APPEALABILITY

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Petitioner pleaded guilty to assault resulting in serious bodily injury and was sentenced to 77 months imprisonment on August 6, 2004. He filed a motion to vacate, set aside, or correct his sentence pursuant to 28 U.S.C. § 2255.

The Court submitted the above-entitled matter to U.S. Magistrate Judge Myles J. Devine and the magistrate judge submitted his report and recommendation to the Court on August 31, 2006, Doc. 10. The report and recommendation was served on the petitioner as required by 28 U.S.C. § 636 on September 7, 2006, by sending a copy to petitioner at the U.S. Penitentiary, Florence, Co. Petitioner did not file any objections. In checking with the Bureau of Prisons, I discovered that the petitioner was transferred to the U.S. Penitentiary, Leavenworth, KS on May 23, 2006. Out of an abundance of caution, a duplicate copy of the report and recommendation was served upon petitioner on October 19, 2006, by sending a copy to petitioner at the U.S. Penitentiary in Leavenworth. Petitioner still has filed no objections.

The Court has reviewed the file and finds that the report and recommendation of the magistrate judge should be accepted and the case dismissed.

Now, therefore,

IT IS ORDERED:

1. The report and recommendation of the U.S. Magistrate Judge filed August 31, 2006, Doc. 10, shall be and is hereby adopted as the findings of fact and conclusions of law herein.

2. The motion to vacate, set aside, or correct sentence is denied and this matter is dismissed with prejudice.

3. Petitioner's motion, Doc. 3, for production of work product is denied.

4. Respondent's motion, Doc. 7, for an extension of time to file answer is denied as moot, the respondent's answer having been timely filed.

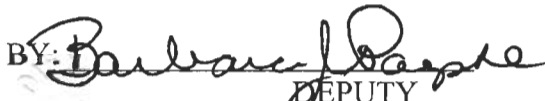
IT IS HEREBY CERTIFIED that there does not exist probable cause of an appealable issue with respect to the Court's order denying petitioner's petition for a writ of habeas corpus. No certificate of appealability will be granted. 28 U.S.C. § 2253(c). This in no way hampers the petitioner's ability to request issuance of the certificate by a circuit judge pursuant to Fed. R. App. P. 22.

Dated this 13<sup>th</sup> day of November, 2006.

BY THE COURT:

  
CHARLES B. KORNMANN  
U.S. District Judge

ATTEST:  
JOSEPH HAAS, CLERK

BY:   
DEPUTY  
(SEAL)